

SECTION B: CONTRACT TYPE, SUPPLIES OR SERVICES AND PRICE/COST

- B.1** The District of Columbia Office of the Attorney General (OAG) (the “District”) is seeking a contractor to provide legal counsel to OAG in support of OAG’s investigation and potential litigation against distributors of prescription opioid pharmaceuticals or any other potentially liable parties including manufacturers.
- B.2** The District contemplates award of a contingency fee contract with the successful Contractor receiving a percentage of the gross recovery to the District of Columbia from the litigation. If no recovery is realized, private counsel subject to a contingency fee contract shall receive no compensation or reimbursement of costs and expenses. If private counsel is hired for multiple matters against multiple defendants under one contract, private counsel will only be entitled to fees, costs, and expenses for a matter against a defendant that private counsel is successful in assisting the District in obtaining a recovery against, and private counsel will not be entitled to fees, costs, or expenses for any matter where there is no recovery by the District.

B.3 PRICE SCHEDULE

BASE PERIOD – Eight (8) Years from date of Award)

Contract Line Item No. (CLIN)	Legal Services	Percentage of Gross Recovery to District	Not to Exceed Total
0001	All Legal Services		
0002	Other Direct Cost	N/A	NTE \$10,000,000.00
Estimated Not-to-Exceed Contract Amount			NTE \$45,000,000.00

OPTION PERIOD 1

Contract Line Item No. (CLIN)	Legal Services	Percentage of Gross Recovery to District	Not to Exceed Total
1001	All Legal Services		
1002	Other Direct Cost	N/A	NTE \$10,000,000.00
Estimated Not-to-Exceed Contract Amount			NTE \$45,000,000.00

OPTION PERIOD 2

Contract Line Item No. (CLIN)	Legal Services	Percentage of Gross Recovery to District	Not to Exceed Total
2001	All Legal Services		
2002	Other Direct Cost	N/A	NTE \$10,000,000.00
Estimated Not-to-Exceed Contract Amount			NTE \$45,000,000.00

- B.4** An offeror responding to this solicitation which is required to subcontract shall be required to submit with its proposal, any subcontracting plan required by law. Proposals responding to this Request for Proposals (RFP) may be rejected if the offeror fails to submit a subcontracting plan that is required by law. For contracts in excess of \$250,000, at least 35% of the dollar volume of the contract shall be subcontracted in accordance with section H.9.

A Subcontracting Plan form is available at <http://ocp.dc.gov>, click on “Required Solicitation Documents”.

- B.5** An offeror responding to this solicitation shall indicate the percentage amount relative to the recovered amount. If proposing a sliding percentage based on the recovery amount, offeror shall clearly indicate each level based on the recovery amount. If proposing a sliding percentage based on the timing of recovery, offeror shall clearly indicate each level based on the recovery time period.

B.6 OTHER DIRECT COSTS

Other Direct Costs (ODC) may be paid under this contract. The annual ceiling for ODCs is \$10,000,000.00, which may be modified as determined reasonable and necessary in the course of investigation and litigation See Section G.5.

The Offeror shall be responsible for all costs and expenses incurred throughout the investigation and litigation. The District will reimburse reasonable costs and expenses only if the Offeror secures monetary recovery for the District. In the event there is no recovery, the District would not owe any costs or expenses incurred by the Offeror. The District understands and agrees, however, that it may incur internal costs attributable to efforts of its own personnel in overseeing and aiding in the investigation and litigation. These internal costs will not be reimbursed to the District.

SECTION C: SPECIFICATIONS/WORK STATEMENT

C.1 SCOPE:

OAG is seeking a contractor for legal services in support of OAG's investigation and potential litigation against distributors of prescription opioid pharmaceuticals or any other potentially liable parties including manufacturers.

The Attorney General will retain sole authority to determine what claims will be brought as well as settlement authority.

C.2 APPLICABLE DOCUMENTS

The following documents are applicable to this procurement and are hereby incorporated by this reference:

Item No.	Document Type	Title	Date
1	Codification and Regulations	Federal Controlled Substances Act and 21 C.F.R. §§1301 <i>et seq.</i>	Most Recent
2	Letter	September 27, 2006 Letter from Drug Enforcement Agency to Pharmaceutical Distributors	September 27, 2006
3	Letter	December 27, 2007 Letter from Drug Enforcement Agency to Pharmaceutical Distributors	December 27, 2007
4	Codification and Regulations	D.C. Code § 48-903.03(a)(1) and D.C. Municipal Regulations 22-B, §1016.1	Most Recent
5	Codification	D.C. Consumer Protection Procedures Act	Most Recent

C.3 DEFINITIONS/GLOSSARY

These terms when used in this RFP have the following meanings:

DEA – The Drug Enforcement Administration. The DEA is a federal law enforcement agency under the U.S. Department of Justice that combats drug use and smuggling within the U.S.

Epidemic – a widespread occurrence in a community at a particular time.

Gross Recovery – the dollar amount the District of Columbia receives on an award of damages, penalties or other monetary relief from each defendant as a result of the firm's representation of the District in the litigation and any subsequent collection efforts.

Opioid Epidemic – the rapid increase in the use of prescription and non-prescription opioids in the United States.

OAG -- The Office of the Attorney General for the District of Columbia. The District agency that represents other District agencies in litigation, including consumer protection litigation.

Offeror -- The Offeror is the legal entity that submits the proposal.

Opioid -- drugs that are opium like and act on the nervous system to relieve pain.

Other Direct Costs – all reasonable costs for goods and services necessary for the potential investigation and litigation against distributors of prescription opioid pharmaceuticals or any other potentially liable parties including manufacturers.

C.4 BACKGROUND

Federal and District laws and regulations require distributors to identify, investigate, and report suspicious orders of controlled substances. Several of the largest pharmaceutical distributors have recently paid large fines to the federal government for failure to detect and report suspicious opioid orders. The District and its residents have expended millions of dollars combatting the opioid epidemic, the crime related to it, and drug treatment and rehabilitation. OAG has initiated an investigation into these practices and will determine whether litigation should be brought to protect District residents and the public interest.

C.5 REQUIREMENTS

C.5.1 The Offeror shall perform legal services that include, but are not limited to:

C.5.1.1 Performing an assessment of OAG’s proposed litigation against the distributors of prescription opioid pharmaceuticals.

C.5.1.2 Investigating and, if warranted, preparing litigation against potential liable parties, if any. The successful offeror will assist in all phases of the investigation and litigation, including preparation of complaint(s), filing complaint(s), service of summons; responding to motions, including motions to dismiss; drafting motions; drafting and responding to discovery requests propounded on the District or OAG; tracking documents obtained in discovery; coordinating litigation with other states and the federal government to promote, to the extent beneficial, a unified approach to litigation; taking depositions, defending depositions, preparing witnesses for depositions; responding to motions for summary judgment or other dispositive pretrial motions; drafting motions for summary judgment or other appropriate dispositive motions on behalf of the District; consulting with experts necessary to analyze and develop the District’s case; identifying experts to testify on behalf of the District; preparing expert witnesses for deposition or trial testimony; preparing legal arguments on motions practice; handling discovery disputes; representing the District in trial or any settlement negotiations; representing the District in responding to pretrial motions; representing the District in any appeal of any judgment or verdict rendered in the action, and if applicable, any remand from appeal.

C.5.1.3 Advise OAG on the conduct of the case and on strategy and tactics for each phase of the case.

C.5.2 Respond to FOIA Officer’s requests: Outside entities may send FOIA requests to OAG regarding this matter. OAG will require the resources in place to scan, search, redact, and produce all responsive documents or, alternatively, to perform this work ahead of time, and make the documents available for examination and review.

C.5.3 STAFFING REQUIREMENTS/LABOR CATEGORY DESCRIPTIONS

The following staff positions are required, and shall be provided by the Contactor. Offerors must submit a resume, or resumes of qualified staff, for each position required, and Offerors may submit multiple candidates for each position identified. Offerors are also expected to designate a staff position who will interface with OAG on staffing, and administrative matters. Proposed candidates shall meet or exceed the following minimum qualifications:

1. Senior Lawyer

- a. J.D. degree from an American Bar Association accredited law school, a minimum of ten (10) years' experience, and a license to practice law in Washington, DC, is eligible to be admitted *pro hac vice* by a member of the Contractor or Sub-Contractor.
- b. Relevant experience, certifications and a proven record of providing advanced legal guidance and recommendations to public sector agencies relative to federal and state consumer protection laws.
- c. Extensive knowledge and recognized industry leadership in legal areas associated with litigation against pharmaceutical companies.
- d. Proven ability to manage a team of legal advisors to ensure efficient operations with limited budgets in an effective manner.
- e. Extensive experience providing advice and guidance regarding complex civil litigation.

2. Legal Associate/Counsel/Junior Lawyer

- f. J.D. degree from an American Bar Association accredited law school, a minimum of five (5) years' experience, a license to practice law in Washington, DC., is eligible to
- g. be admitted *pro hac vice* by a member of the Contractor or Sub-Contractor.
- a. Relevant experience, certifications and a proven record of providing legal support and recommendations to public sector agencies relative to federal and state consumer protection laws.
- h. Knowledge and leadership in legal areas associated with litigation against pharmaceutical companies.
- b. Experience conducting legal research and performing legal analysis which require discretion and independent judgment.
- c. Experience providing advice and guidance regarding complex civil litigation.

3. Paralegal

- a. Experienced in providing legal assistance including but not limited to creation of presentations, document drafting, reports, and applications.
- b. Ability to conduct research and perform legal analysis of request or other similar legal support functions which require discretion and independent judgment.

C.5.4 Direct Cost Requirements:

The Offeror shall seek written approval from OAG prior to incurring any and all direct costs exceeding \$10,000.00. The contractor must seek written approval from OAG prior to engaging an expert witness or other consultants.

C.5.5 The Offeror shall be available for an in-person kickoff meeting within in seven (7) business days from date of award.

SECTION D: PACKAGING AND MARKING

- D.1** The packaging and marking requirements for this contract shall be governed by clause number (2), Shipping Instructions-Consignment, of the Government of the District of Columbia's Standard Contract Provisions for use with Supplies and Services Contracts, dated July 2010. (Attachment J.1)

SECTION E: INSPECTION AND ACCEPTANCE

- E.1** The inspection and acceptance requirements for this contract shall be governed by clause number six (6), Inspection of Services of the Government of the District of Columbia's Standard Contract Provisions for use with Supplies and Services Contracts, dated July 2010. (Attachment J.1)

SECTION F: PERIOD OF PERFORMANCE AND DELIVERABLES

F.1 TERM OF CONTRACT

The term of the contract shall be for a period of eight (8) years from date of award specified on the cover page of this contract.

F.2 OPTION TO EXTEND THE TERM OF THE CONTRACT

F.2.1 The District may extend the term of this contract for a period of two (2) one-year option periods, or successive fractions thereof, by written notice to the Contractor before the expiration of the contract; provided that the District will give the Contractor preliminary written notice of its intent to extend at least thirty (30) days before the contract expires. The preliminary notice does not commit the District to an extension. The exercise of this option is subject to the availability of funds at the time of the exercise of this option. The Contractor may waive the thirty (30) day preliminary notice requirement by providing a written waiver to the Contracting Officer prior to expiration of the contract.

F.2.2 If the District exercises this option, the extended contract shall be considered to include this option provision.

F.2.3 The price for the option period shall be as specified in the Section B of the contract.

F.2.4 The total duration of this contract, including the exercise of any options under this clause, shall not exceed ten (10) years.

F.3 DELIVERABLES

The Contractor shall perform the activities required to successfully complete the District's requirements and submit each deliverable to the Contract Administrator (CA) identified in section G.9 in accordance with the following:

CLIN	Deliverable	Quantity	Format/Method of Delivery	Due Date
1	Draft a memorandum assessing OAG's proposed litigation against the distributors and/or manufacturers of prescription opioid pharmaceuticals	TBD	PDF/Electronic	As requested
2	Draft a report of investigation of potential liable parties in the distribution of prescription opioid pharmaceuticals	TBD	PDF/Electronic	As requested
3	Prepare and file complaint, including service of summons	TBD	PDF/Electronic	As requested
4	Respond to motions	TBD	PDF/Electronic	As requested
5	Draft motions	TBD	PDF/Electronic	As requested
6	Draft and respond to discovery requests	TBD	PDF/Electronic	As requested
7	Track and maintain documents obtained in discovery	TBD	PDF/Electronic	As requested
8	Coordinate litigation with other states and the federal government	TBD	In-person/ Designated Site	As requested

9	Take and defend depositions, prepare witnesses for depositions	TBD	In-person/ Designated Site	As requested
10	Draft responses to motions for summary judgment or other dispositive pretrial motions on behalf of the District	TBD	PDF/Electronic	As requested
11	Draft motions for summary judgment or other appropriate dispositive motions on behalf of the District	TBD	PDF/Electronic	As requested
12	Identify experts to testify on behalf of the District	TBD	In-person/ Designated Site	As requested
13	Prepare expert witnesses for deposition or trial testimony	TBD	In-person/ Designated Site	As requested
14	Prepare legal arguments on motions practice	TBD	PDF/Electronic	As requested
15	Handle discovery disputes	TBD	In-person/ Telephonic/Electronic	As requested
16	Represent the District in trial or any settlement negotiations	TBD	In-person/ Designated Site	As requested
17	Represent the District in pretrial motions hearings	TBD	In-person/ Designated Site	As requested
18	Represent the District in any appeal of any judgment or verdict rendered in the action, and if applicable, any remand from appeal	TBD	In-person/ Designated Site	As requested
19	Participate in meetings with OAG, with District, State, and Federal agencies, as needed.	TBD	In-person/ Designated Site	As requested
20	Complete legal research assignments as needed.	TBD	PDF/Electronic, Telephonic, and On-site, as needed	As requested
21	Monthly Status Reports	TBD	PDF/Electronic	As requested

F.3.1 The Contractor shall submit to the District, as a deliverable, the report described in section H.5.5 that is required by the 51% District Residents New Hires Requirements and First Source Employment Agreement. If the Contractor does not submit the report as part of the deliverables, final payment to the Contractor shall not be paid pursuant to section G.3.2.

SECTION G: CONTRACT ADMINISTRATION

G.1 PAYMENT REQUEST

G.1.1 The District will make payment to the Contractor, upon the conclusion of the litigation and the District's receipt of any monetary recovery as a result of the firm's representation of the District in the litigation. If no monetary recovery is realized, Contractor shall receive no compensation or reimbursement for any costs incurred.

G.1.2 The District will pay the Contractor on or before the 30th day after receiving a proper payment request from the Contractor following the occurrence of the factors outlined in paragraph G.1.1.

G.2 PAYMENT REQUEST SUBMITTAL

G.2.1 The Contractor shall submit a proper payment request as specified in Section G.4. The payment request shall be submitted to the agency Chief Financial Officer with concurrent copies to the CA specified in Section G.9 below. The address of the CFO is:

Office of Finance & Resource Management
Office of the Controller/Agency CFO
441 4th Street, NW, Suite 890 North
Washington, DC 20001
(202) 727-0333

G.2.2 To constitute a proper payment request, the Contractor shall submit the following information on the payment request:

G.2.2.1 Contractor's name, federal tax ID and payment request date (date payment request as of the date of mailing or transmittal);

G.2.2.2 Contract number and payment request number;

G.2.2.3 Description, price, quantity and the date(s) that the supplies or services were delivered or performed;

G.2.2.4 Other supporting documentation or information, as required by the Contracting Officer;

G.2.2.5 Name, title, telephone number and complete mailing address of the responsible official to whom payment is to be sent;

G.2.2.6 Name, title, phone number of person preparing the payment request;

G.2.2.7 Name, title, phone number and mailing address of person (if different from the person identified in G.2.2.6 above) to be notified in the event of a defective payment request; and

G.2.2.8 Authorized signature.

G.3 FIRST SOURCE AGREEMENT REQUEST FOR FINAL PAYMENT

- G.3.1** For contracts subject to the 51% District Residents New Hires Requirements and First Source Employment Agreement requirements, final request for payment must be accompanied by the report or a waiver of compliance discussed in section H.5.5.
- G.3.2** No final payment shall be made to the Contractor until the agency CFO has received the Contracting Officer's final determination or approval of waiver of the Contractor's compliance with 51% District Residents New Hires Requirements and First Source Employment Agreement requirements.

G.4 PAYMENT

The Contractor will undertake the investigation and litigation on a contingency fee basis. The District will owe the Contractor attorneys' fees only if the Contractor secures a monetary recovery for the District, whether by settlement or by judgment. The Contractor will receive a contingency fee based on the winning offer and any subsequent negotiations between the District and the Contractor. The contingency fee will be calculated from the gross recovery the Contractor secures from each defendant. The Contractor shall not receive reimbursement for any expenses incurred in the investigation or litigation related to any defendant against whom the Contractor does not obtain a monetary recovery through settlement or judgment.

G.5 ASSIGNMENT OF CONTRACT PAYMENTS

- G.5.1** In accordance with 27 DCMR 3250, the Contractor may assign to a bank, trust company, or other financing institution funds due or to become due as a result of the performance of this contract.
- G.5.2** Any assignment shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party.
- G.5.3** Notwithstanding an assignment of contract payments, the Contractor, not the assignee, is required to prepare invoices. Where such an assignment has been made, the original copy of the invoice must refer to the assignment and must show that payment of the invoice is to be made directly to the assignee as follows:

"Pursuant to the instrument of assignment dated _____, make payment of this invoice to (name and address of assignee)."

G.6 THE QUICK PAYMENT CLAUSE

G.6.1 Interest Penalties to Contractors

- G.6.1.1** The District will pay interest penalties on amounts due to the Contractor under the Quick Payment Act, D.C. Official Code §2-221.01 *et seq.*, for the period beginning on the day after the required payment date and ending on the date on which payment of the amount is made. Interest shall be calculated at the rate of 1% per month. No interest penalty shall be paid if payment for the completed delivery of the item of property or service is made on or before:

- a) the 3rd day after the required payment date for meat or a meat product;

- b) the 5th day after the required payment date for an agricultural commodity; or
- c) the 15th day after the required payment date for any other item.

G.6.1.2 Any amount of an interest penalty which remains unpaid at the end of any 30-day period shall be added to the principal amount of the debt and thereafter interest penalties shall accrue on the added amount.

G.6.2 Payments to Subcontractors

G.6.2.1 The Contractor must take one of the following actions within seven (7) days of receipt of any amount paid to the Contractor by the District for work performed by any subcontractor under this contract:

- a) Pay the subcontractor for the proportionate share of the total payment received from the District that is attributable to the subcontractor for work performed under the contract; or
- b) Notify the District and the subcontractor, in writing, of the Contractor's intention to withhold all or part of the subcontractor's payment and state the reason for the nonpayment.

G.6.2.2 The Contractor must pay any subcontractor or supplier interest penalties on amounts due to the subcontractor or supplier beginning on the day after the payment is due and ending on the date on which the payment is made. Interest shall be calculated at the rate of 1% per month. No interest penalty shall be paid on the following if payment for the completed delivery of the item of property or service is made on or before:

- a) the 3rd day after the required payment date for meat or a meat product;
- b) the 5th day after the required payment date for an agricultural commodity; or
- c) the 15th day after the required payment date for any other item.

G.6.2.3 Any amount of an interest penalty which remains unpaid by the Contractor at the end of any 30-day period shall be added to the principal amount of the debt to the subcontractor and thereafter interest penalties shall accrue on the added amount.

G.6.2.4 A dispute between the Contractor and subcontractor relating to the amounts or entitlement of a subcontractor to a payment or a late payment interest penalty under the Quick Payment Act does not constitute a dispute to which the District of Columbia is a party. The District of Columbia may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

G.6.3 Subcontract requirements

G.6.3.1 The Contractor shall include in each subcontract under this contract a provision requiring the subcontractor to include in its contract with any lower-tier subcontractor or supplier the payment and interest clauses required under paragraphs (1) and (2) of D.C. Official Code §2-221.02(d).

G.7 CONTRACTING OFFICER (CO)

Contracts will be entered into and signed on behalf of the District only by contracting officers. The contact information for the Contracting Officer is:

Sanaz Etminan
441 4th Street, NW, Ste. 1100S
Washington, DC 20001
202-727-3400
Sanaz.Etminan@dc.gov

G.7 AUTHORIZED CHANGES BY THE CONTRACTING OFFICER

- G.7.1** The CO is the only person authorized to approve changes in any of the requirements of this contract.
- G.7.2** The Contractor shall not comply with any order, directive or request that changes or modifies the requirements of this contract, unless issued in writing and signed by the CO.
- G.7.3** In the event the Contractor effects any change at the instruction or request of any person other than the CO, the change will be considered to have been made without authority and no adjustment will be made in the contract price to cover any cost increase incurred as a result thereof.

G.8 CONTRACT ADMINSTRATOR (CA)

- G.8.1** The CA is responsible for general administration of the contract and advising the CO as to the Contractor's compliance or noncompliance with the contract. The CA has the responsibility of ensuring the work conforms to the requirements of the contract and such other responsibilities and authorities as may be specified in the contract. These include:
 - G.8.1.1** Keeping the CO fully informed of any technical or contractual difficulties encountered during the performance period and advising the CO of any potential problem areas under the contract;
 - G.8.1.2** Coordinating site entry for Contractor personnel, if applicable;
 - G.8.1.3** Reviewing invoices for completed work and recommending approval by the CO if the Contractor's costs are consistent with the negotiated amounts and progress is satisfactory and commensurate with the rate of expenditure;
 - G.8.1.4** Reviewing and approving invoices for deliverables to ensure receipt of goods and services. This includes the timely processing of invoices and vouchers in accordance with the District's payment provisions; and
 - G.8.1.5** Maintaining a file that includes all contract correspondence, modifications, records of inspections (site, data, equipment) and invoice or vouchers.

G.8.2 The address and telephone number of the CA is:

Name: Robyn Bender
Title: Deputy Attorney General, Public Advocacy Division
Office of the Attorney General
441 4th Street, N.W., 6th Floor
Washington, DC 20001
Telephone: (202) 724-6610

G.8.3 The CA shall NOT have the authority to:

1. Award, agree to, or sign any contract, delivery order or task order. Only the CO shall make contractual agreements, commitments or modifications;
2. Grant deviations from or waive any of the terms and conditions of the contract;
3. Increase the dollar limit of the contract or authorize work beyond the dollar limit of the contract,
4. Authorize the expenditure of funds by the Contractor;
5. Change the period of performance; or
6. Authorize the use of District property, except as specified under the contract.

G.8.4 The Contractor will be fully responsible for any changes not authorized in advance, in writing, by the CO; may be denied compensation or other relief for any additional work performed that is not so authorized; and may also be required, at no additional cost to the District, to take all corrective action necessitated by reason of the unauthorized changes.

G.9 ETHICAL OBLIGATIONS AND LEGAL CONFLICTS OF INTEREST

An attorney-client relationship will exist between the District and any attorney who performs work under the contract, as well as between the District and the firm of any attorney who performs work under the contract. The D.C. Rules of Professional Conduct (RPC) and the ethical rules of any other jurisdiction in which work is performed are binding on the Contractor. The parties agree that the District may have a contractual cause of action based on violation of such rules, in addition to any other remedies available.

In addition to the prohibitions contained in the RPC and the ethical rules of any other jurisdiction in which work is performed, the Contractor agrees that it shall recognize that in the performance of the contract it may receive certain information submitted to the District government on a proprietary basis by third parties, information which relates to potential or actual claims against the District government, or information which relates to matters in dispute or litigation. Unless the District consents to a particular disclosure, the Contractor shall use such information exclusively in the performance of the contract and shall forever hold inviolate and protect from disclosure all such information, except disclosures required by applicable law or court order. The Contractor also agrees that, to the extent it is permitted to disclose such information, it will make such disclosures only to those individuals who need to know such information in order to perform required tasks in their official capacity and will restrict access to such information to such individuals.

Before any Contractor can be retained to perform legal services under the contract, on behalf of the District government, the Attorney General for the District of Columbia must review and waive all actual or potential direct and indirect conflicts of interest pursuant to RPC 1.6, 1.7, 1.8, 1.9 and 1.10. After notice of its selection within the competitive range, each prospective

Contractor shall provide the Attorney General with the following: (1) a written statement that there exists no Rule 1.7(a) direct conflict of interest regarding the work to be performed under the contract; (2) a written description of all actual or potential conflicts of interest regarding the work to be performed under the contract that require waiver pursuant to Rule 1.7(b) because the Contractor represents another client in a matter adverse to any of the following: (i) the District government agency or instrumentality to be represented under the contract; (ii) the District government as a whole; or (iii) any other agency or instrumentality of the District government (for this purpose, under D.C. Bar Legal Ethics Committee Opinion No. 268, a representation of a private client against a discrete government agency or instrumentality can have government-wide implications and thus constitute a representation adverse to the government as a whole pursuant to the RPC); and (3) a written description of all representations of clients who are or will be adverse to the District government with regard to the work to be performed under the contract, whether or not such representations are related to the matter for which the work is to be performed under the contract.

Before any Contractor can be retained pursuant to the contract, the Attorney General for the District of Columbia must review all actual, direct and potential conflicts of interest on behalf of the District government in light of D.C. Bar Rules of Professional Conduct (“RPC”) 1.6, 1.7, 1.8, 1.9 and 1.10. Each prospective Contractor shall provide the Attorney General with written notice of all actual or potential direct and indirect conflicts of interest in which the Contractor represents (or may represent) another client with interests adverse to the District government agency to be represented as well as against the District government as a whole. For this purpose, under D.C. Bar Legal Ethics Committee Opinion No. 268, hereto, a representation of a private client against a discrete government agency can have government-wide implications and thus qualify under the RPC as being against the government as a whole, including the individual agency that the private firm represents. In that situation, the private firm would be required to notify the Attorney General of the existence of a conflict under RPC 1.7 and obtain consent to such representation and waiver of the conflict. The Attorney General makes every attempt to be reasonable in deciding whether or not to consent to a conflict and usually makes this decision promptly after receiving notice of the conflict.

The Attorney General generally does not grant prospective conflict of interest waivers, except in certain *pro bono* matters. Thus, in addition to the prohibitions contained in the RPC and the ethical rules of any other jurisdiction in which work is performed under the contract, without the consent of the Attorney General, the Contractor shall not represent any party other than the District in any disputes, negotiations, proceedings or litigation adverse to any agency or instrumentality of the District government or the District government as a whole, including, but not limited to, matters related to the work to be performed under the Contract. The Contractor shall notify the Attorney General immediately, in writing, of any potential conflicts of interest (as defined in the RPC) that arise during the period that the Contractor is performing work under the contract. The Attorney General makes every attempt to be reasonable in deciding whether or not to consent to a conflict of interest and usually makes this decision promptly after receiving notice and sufficient information regarding the conflict. If the Attorney General does not waive a conflict of interest, the Contractor shall undertake immediate action to eliminate the source of any such conflict of interest.

SECTION H: SPECIAL CONTRACT REQUIREMENTS

H.1 HIRING OF DISTRICT RESIDENTS AS APPRENTICES AND TRAINEES

H.1.1 For all new employment resulting from this contract or subcontracts hereto, as defined in Mayor's Order 83-265 and implementing instructions, the Contractor shall use its best efforts to comply with the following basic goal and objectives for utilization of bona fide residents of the District of Columbia in each project's labor force:

H.1.1.1 At least fifty-one (51) percent of apprentices and trainees employed shall be residents of the District of Columbia registered in programs approved by the District of Columbia Apprenticeship Council.

H.1.2 The Contractor shall negotiate an Employment Agreement with the Department of Employment Services ("DOES") for jobs created as a result of this contract. The DOES shall be the Contractor's first source of referral for qualified apprentices and trainees in the implementation of employment goals contained in this clause.

H.2 DEPARTMENT OF LABOR WAGE DETERMINATIONS

The Contractor shall be bound by the Wage Determination No. 2015-4281, Revision no. 6, dated May 08, 2017, issued by the U.S. Department of Labor in accordance with the Service Contract Act, 41 U.S.C. §351 *et seq.*, and incorporated herein as Section J.2. The Contractor shall be bound by the wage rates for the term of the contract subject to revision as stated herein and in accordance with Section 24 of the SCP. If an option is exercised, the Contractor shall be bound by the applicable wage rates at the time of the option. If the option is exercised and the CO obtains a revised wage determination, the revised wage determination is applicable for the option periods and the Contractor may be entitled to an equitable adjustment.

H.3 PREGNANT WORKERS FAIRNESS

H.3.1 The Contractor shall comply with the Protecting Pregnant Workers Fairness Act of 2016, D.C. Official Code § 32-1231.01 *et seq.* (PPWF Act).

H.3.2 The Contractor shall not:

(a) Refuse to make reasonable accommodations to the known limitations related to pregnancy, childbirth, related medical conditions, or breastfeeding for an employee, unless the Contractor can demonstrate that the accommodation would impose an undue hardship;

(b) Take an adverse action against an employee who requests or uses a reasonable accommodation in regard to the employee's conditions or privileges of employment, including failing to reinstate the employee when the need for reasonable accommodations ceases to the employee's original job or to an equivalent position with equivalent:

(1) Pay;

(2) Accumulated seniority and retirement;

(3) Benefits; and

(4) Other applicable service credits;

(c) Deny employment opportunities to an employee, or a job applicant, if the denial is based on the need of the employer to make reasonable accommodations to the known limitations related to pregnancy, childbirth, related medical conditions, or breastfeeding;

(d) Require an employee affected by pregnancy, childbirth, related medical conditions, or breastfeeding to accept an accommodation that the employee chooses not to accept if the employee does not have a known limitation related to pregnancy, childbirth, related medical conditions, or breastfeeding or the accommodation is not necessary for the employee to perform her duties;

(e) Require an employee to take leave if a reasonable accommodation can be provided; or

(f) Take adverse action against an employee who has been absent from work as a result of a pregnancy-related condition, including a pre-birth complication.

H.3.3 The Contractor shall post and maintain in a conspicuous place a notice of rights in both English and Spanish and provide written notice of an employee's right to a needed reasonable accommodation related to pregnancy, childbirth, related medical conditions, or breastfeeding pursuant to this chapter to:

(a) New employees at the commencement of employment;

(b) Existing employees; and

(c) An employee who notifies the employer of her pregnancy, or other condition covered by this chapter, within 10 days of the notification.

H.3.4 The Contractor shall provide an accurate written translation of the notice of rights to any non-English or non-Spanish speaking employee.

H.3.5 Violations of the PPWF Act shall be subject to civil penalties as described in the Act.

H.4 UNEMPLOYED ANTI-DISCRIMINATION

H.4.1 The Contractor shall comply with the Unemployed Anti-Discrimination Act of 2012, D.C. Official Code § 32-1361 *et seq.*

H.4.2 The Contractor shall not:

(a) Fail or refuse to consider for employment, or fail or refuse to hire, an individual as an employee because of the individual's status as unemployed; or

(b) Publish, in print, on the Internet, or in any other medium, an advertisement or announcement for any vacancy in a job for employment that includes:

(1) Any provision stating or indicating that an individual's status as unemployed disqualifies the individual for the job; or

(2) Any provision stating or indicating that an employment agency will not consider or hire an individual for employment based on that individual's status as unemployed.

H.4.3 Violations of the Unemployed Anti-Discrimination Act shall be subject to civil penalties as described in the Act.

H.5 51% DISTRICT RESIDENTS NEW HIRES REQUIREMENTS AND FIRST SOURCE EMPLOYMENT AGREEMENT

Delete Article 35, 51% District Residents New Hires Requirements and First Source Employment Agreement, of the Standard Contract Provisions dated July 2010 for use with District of Columbia Government Supplies and Services Contracts and substitute the following Section **H.5 51% DISTRICT RESIDENTS NEW HIRES REQUIREMENTS AND FIRST SOURCE EMPLOYMENT AGREEMENT** in its place:

H.5 51% DISTRICT RESIDENTS NEW HIRES REQUIREMENTS AND FIRST SOURCE EMPLOYMENT AGREEMENT

H.5.1 For contracts for services in the amount of \$300,000 or more, the Contractor shall comply with the First Source Employment Agreement Act of 1984, as amended, D.C. Official Code § 2-219.01 et seq. (First Source Act).

H.5.2 The Contractor shall enter into and maintain during the term of the contract, a First Source Employment Agreement (Employment Agreement) with the District of Columbia Department of Employment Service's (DOES), in which the Contractor shall agree that:

- (a) The first source for finding employees to fill all jobs created in order to perform the contract shall be the First Source Register; and
- (b) The first source for finding employees to fill any vacancy occurring in all jobs covered by the Employment Agreement shall be the First Source Register.

H.5.3 The Contractor shall not begin performance of the contract until its Employment Agreement has been accepted by DOES. Once approved, the Employment Agreement shall not be amended except with the approval of DOES.

H.5.4 The Contractor agrees that at least 51% of the new employees hired to perform the contract shall be District residents.

H.5.5 The Contractor's hiring and reporting requirements under the First Source Act and any rules promulgated thereunder shall continue for the term of the contract.

H.5.6 The CO may impose penalties, including monetary fines of 5% of the total amount of the direct and indirect labor costs of the contract, for a willful breach of the Employment Agreement, failure to submit the required hiring compliance reports, or deliberate submission of falsified data.

H.5.7 If the Contractor does not receive a good faith waiver, the CO may also impose an additional penalty equal to 1/8 of 1% of the total amount of the direct and indirect labor costs of the contract for each percentage by which the Contractor fails to meet its hiring requirements.

- H.5.8** Any contractor which violates, more than once within a 10-year timeframe, the hiring or reporting requirements of the First Source Act shall be referred for debarment for not more than five (5) years.
- H.5.9** The contractor may appeal any decision of the CO pursuant to this clause to the D.C. Contract Appeals Board as provided in **Article 1.2 Disputes Clause**.
- H.5.10** The provisions of the First Source Act do not apply to nonprofit organizations which employ 50 employees or less.
- H.6 RESERVED**
- H.7 RESERVED**
- H.8 RESERVED**
- H.9 SUBCONTRACTING REQUIREMENTS**
- H.9.1 Mandatory Subcontracting Requirements**
- H.9.1.1** Unless the Director of the Department of Small and Local Business Development (DSLBD) has approved a waiver in writing, for all contracts in excess of \$250,000, at least 35% of the dollar volume of the contract shall be subcontracted to qualified small business enterprises (SBEs).
- H.9.1.2** If there are insufficient SBEs to completely fulfill the requirement of paragraph H.9.1.1, then the subcontracting may be satisfied by subcontracting 35% of the dollar volume to any qualified certified business enterprises (CBEs); provided, however, that all reasonable efforts shall be made to ensure that SBEs are significant participants in the overall subcontracting work.
- H.9.1.3** A prime contractor that is certified by DSLBD as a small, local or disadvantaged business enterprise shall not be required to comply with the provisions of sections H.9.1.1 and H.9.1.2.
- H.9.1.4** Except as provided in H.9.1.5 and H.9.1.7, a prime contractor that is a CBE and has been granted a proposal preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 35% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracting effort shall be with CBEs. A CBE prime contractor that performs less than 35% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.
- H.9.1.5** A prime contractor that is a certified joint venture and has been granted a proposal preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 50% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracting effort shall be with CBEs. A certified joint venture prime contractor that performs less than 50% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.
- H.9.1.6** Each CBE utilized to meet these subcontracting requirements shall perform at least 35% of its contracting effort with its own organization and resources.

H.9.1.7 A prime contractor that is a CBE and has been granted a proposal preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 50% of the on-site work with its own organization and resources if the contract is \$1 million or less.

H.9.2 Subcontracting Plan

If the prime contractor is required by law to subcontract under this contract, it must subcontract at least 35% of the dollar volume of this contract in accordance with the provisions of section H.9.1 of this clause. The plan shall be submitted as part of the proposal and may only be amended after award with the prior written approval of the CO and Director of DSLBD. Any reduction in the dollar volume of the subcontracted portion resulting from an amendment of the plan after award shall inure to the benefit of the District.

Each subcontracting plan shall include the following:

- (1) The name and address of each subcontractor;
- (2) A current certification number of the small or certified business enterprise;
- (3) The scope of work to be performed by each subcontractor; and
- (4) The price that the prime contractor will pay each subcontractor.

H.9.3 Copies of Subcontracts

Within twenty-one (21) days of the date of award, the Contractor shall provide fully executed copies of all subcontracts identified in the subcontracting plan to the CO, CA, District of Columbia Auditor and the Director of DSLBD.

H.9.4 Subcontracting Plan Compliance Reporting

H.9.4.1 If the Contractor has a subcontracting plan required by law for this contract, the Contractor shall submit a quarterly report to the CO, CA, District of Columbia Auditor and the Director of DSLBD. The quarterly report shall include the following information for each subcontract identified in the subcontracting plan:

- (A) The price that the prime contractor will pay each subcontractor under the subcontract;
- (B) A description of the goods procured or the services subcontracted for;
- (C) The amount paid by the prime contractor under the subcontract; and
- (D) A copy of the fully executed subcontract, if it was not provided with an earlier quarterly report.

H.9.4.2 If the fully executed subcontract is not provided with the quarterly report, the prime contractor will not receive credit toward its subcontracting requirements for that subcontract.

H.9.5 Annual Meetings

Upon at least 30-days written notice provided by DSLBD, the Contractor shall meet annually with the CO, CA, District of Columbia Auditor and the Director of DSLBD to provide an update on its subcontracting plan.

H.9.6 Notices

The Contractor shall provide written notice to the DSLBD and the District of Columbia Auditor upon commencement of the contract and when the contract is completed.

H.9.7 Enforcement and Penalties for Breach of Subcontracting Plan

- H.9.7.1** A contractor shall be deemed to have breached a subcontracting plan required by law, if the contractor (i) fails to submit subcontracting plan monitoring or compliance reports or other required subcontracting information in a reasonably timely manner; (ii) submits a monitoring or compliance report or other required subcontracting information containing a materially false statement; or (iii) fails to meet its subcontracting requirements.
- H.9.7.2** A contractor that is found to have breached its subcontracting plan for utilization of CBEs in the performance of a contract shall be subject to the imposition of penalties, including monetary fines in accordance with D.C. Official Code § 2-218.63.
- H.9.7.3** If the CO determines the Contractor's failure to be a material breach of the contract, the CO shall have cause to terminate the contract under the default provisions in **clause 8 of the SCP, Default**.

H.10 FAIR CRIMINAL RECORD SCREENING

- H.10.1** The Contractor shall comply with the provisions of the Fair Criminal Record Screening Amendment Act of 2014, effective December 17, 2014 (D.C. Law 20-152) (the "Act" as used in this section). This section applies to any employment, including employment on a temporary or contractual basis, where the physical location of the employment is in whole or substantial part within the District of Columbia.
- H.10.2** Prior to making a conditional offer of employment, the Contractor shall not require an applicant for employment, or a person who has requested consideration for employment by the Contractor, to reveal or disclose an arrest or criminal accusation that is not then pending or did not result in a criminal conviction.
- H.10.3** After making a conditional offer of employment, the Contractor may require an applicant to disclose or reveal a criminal conviction.
- H.10.4** The Contractor may only withdraw a conditional offer of employment, or take adverse action against an applicant, for a legitimate business reason as described in the Act.
- H.10.5** This section and the provisions of the Act shall not apply:
- (a) Where a federal or District law or regulation requires the consideration of an applicant's criminal history for the purposes of employment;
 - (b) To a position designated by the employer as part of a federal or District government program or obligation that is designed to encourage the employment of those with criminal histories;

(c) To any facility or employer that provides programs, services, or direct care to, children, youth, or vulnerable adults; or

(d) To employers that employ less than 11 employees.

H.10.6 A person claiming to be aggrieved by a violation of the Act may file an administrative complaint with the District of Columbia Office of Human Rights, and the Commission on Human Rights may impose monetary penalties against the Contractor.

H.11 DISTRICT RESPONSIBILITIES

H.11.1 The Attorney General shall retain complete control over the course and conduct of the matter and shall retain all decision-making authority over the matter, including but not limited to whether and when to initiate litigation, against whom actions will be taken, the claims to be brought in litigation, approval and rejection of all settlement offers, the scope and nature of any injunctive relief, and the amount and type of any restitution, damages and/or penalties to be sought.

H.11.2 The Attorney General may designate a government attorney and other staff members to oversee and assist Contractor with this investigation and litigation. The identity and responsibilities of such personnel so assigned shall be determined solely by the Attorney General or his designee.

H.11.3 Any party may contact the government attorney directly, without having to confer with the private counsel.

H.11.4 A government attorney with supervisory authority for the case shall participate in all significant litigation matters and settlement conferences.

H.11.5 All substantive pleadings, motions, briefs, formal documents, and agreements should bear the signature of the Attorney General or his designee.

H.11.6 All settlement decisions shall be made exclusively at the discretion of the Attorney General or his designee.

H.11.7 The Office of Attorney General will provide the Contractor with conference room space for meetings and/or depositions as needed in Washington, D.C. throughout this engagement:

H.12 CONTRACTOR RESPONSIBILITIES

H.12.1 Records Retainage

H.12.2 The Contractor shall maintain detailed, current billing records for all fees, costs, and expenses, including the time billed for all attorneys and paralegals. The Contractor shall retain and make available all billing records related to the services provided under this contract for a minimum of twelve (12) years from the expiration or termination of the contract or the resolution of any appeal, whichever occurs later.

H.12.3 The Contractor shall preserve and make available to OAG all records related to the matter for a minimum of twelve (12) years from the date of final settlement or until the litigation is completed, including the resolution of any appeal, whichever occurs later.

(a) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated for twelve (12) years after any resulting final termination settlement; and

(b) The Contractor shall make available records relating to appeals under the Disputes Clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

H.13 DIVERSION, REASSIGNMENT AND REPLACEMENT OF KEY PERSONNEL

The key personnel specified in the contract are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified key personnel for any reason, the Contractor shall notify the CO at least thirty (30) calendar days in advance and shall submit justification, including proposed substitutions, in sufficient detail to permit evaluation of the impact upon the contract. The Contractor shall obtain written approval of the CO for any proposed substitution of key personnel.

SECTION I: CONTRACT CLAUSES

I.1 APPLICABILITY OF STANDARD CONTRACT PROVISIONS

The Standard Contract Provisions for use with District of Columbia Government Supplies and Services Contracts dated July 2010 (“SCP”) are incorporated as part of the contract. To the extent that any of the Standard Contract Provisions conflict with the provisions of this contract, the contract provisions shall have precedence. To obtain a copy of the SCP go to www.ocp.dc.gov, click on OCP Policies under the heading “Information”, then click on “Standard Contract Provisions – Supplies and Services Contracts”.

I.2 DISPUTES: (Delete Article 14, Disputes, of the Standard Contract Provisions for use with District of Columbia Government Supplies and Services Contracts dated July 2010 and substitute the following Article I.2, Disputes) (Interim PPRA Version, July 2011).

I.2.1 All disputes arising under or relating to this contract shall be resolved as provided herein.

I.2.2 Claims by a Contractor against the District:

Claim, as used in paragraph I.2.2 of this clause, means a written assertion by the Contractor seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.

I.2.2.1 All claims by a Contractor against the District arising under or relating to a contract shall be in writing and shall be submitted to the CO for a decision. The Contractor’s claim shall contain at least the following:

I.2.2.1.1 A description of the claim and the amount in dispute;

I.2.2.1.2 Data or other information in support of the claim;

I.2.2.1.3 A brief description of the Contractor’s efforts to resolve the dispute prior to filing the claim; and

I.2.2.1.4 The Contractor’s request for relief or other action by the CO.

I.2.2.2 The CO may meet with the Contractor in a further attempt to resolve the claim by agreement.

I.2.2.3 The CO shall issue a decision on any claim within 120 calendar days after receipt of the claim. Whenever possible, the CO shall take into account factors such as the size and complexity of the claim and the adequacy of the information in support of the claim provided by the Contractor.

I.2.2.4 The CO’s written decision shall do the following:

I.2.2.4.1 Provide a description of the claim or dispute;

I.2.2.4.2 Refer to the pertinent contract terms;

I.2.2.4.3 State the factual areas of agreement and disagreement.

I.2.2.4.4 State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;

I.2.2.4.5 If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted;

I.2.2.4.6 Indicate that the written document is the CO's final decision; and

I.2.2.4.7 Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.

I.2.2.5 Failure by the CO to issue a decision on a contract claim within 120 days of receipt of the claim will be deemed to be a denial of the claim, and will authorize the commencement of an appeal to the Contract Appeals Board as provided by D.C. Official Code § 2-360.04.

I.2.2.5.1 If a Contractor is unable to support any part of his or her claim and it is determined that the inability is attributable to a material misrepresentation of fact or fraud on the part of the Contractor, the Contractor shall be liable to the District for an amount equal to the unsupported part of the claim in addition to all costs to the District attributable to the cost of reviewing that part of the Contractor's claim.

I.2.2.5.2 Liability under Paragraph I.2.2.5.1 shall be determined within six (6) years of the commission of the misrepresentation of fact or fraud.

I.2.2.6 Pending final decision of an appeal, action, or final settlement, the Contractor shall proceed diligently with performance of the contract in accordance with the decision of the CO.

I.2.3 Claims by the District against a Contractor:

I.2.3.1 Claim as used in paragraph I.2.3 of this clause, means a written demand or written assertion by the District seeking, as a matter of right, the payment of money in a sum certain, the adjustment of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.

I.2.3.2 The CO shall decide all claims by the District against a contractor arising under or relating to a contract.

I.2.3.2.1 The CO shall send written notice of the claim to the Contractor. The CO's written decision shall do the following:

I.2.3.2.1.1 Provide a description of the claim or dispute;

I.2.3.2.1.2 Refer to the pertinent contract terms;

I.2.3.2.1.3 State the factual areas of agreement and disagreement;

I.2.3.2.1.4 State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;

I.2.3.2.1.5 If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted;

I.2.3.2.1.6 Indicate that the written document is the CO's final decision; and

I.2.3.2.1.7 Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.

I.2.3.3 The CO shall support the decision by reasons and shall inform the Contractor of its rights as provided herein.

I.2.3.4 Before or after issuing the decision, the CO may meet with the Contractor to attempt to resolve the claim by agreement

I.2.3.5 The authority contained in this clause I.2.3 shall not apply to a claim or dispute for penalties or forfeitures prescribed by statute or regulation which another District agency is specifically authorized to administer, settle, or determine.

I.2.3.6 This clause shall not authorize the CO to settle, compromise, pay, or otherwise adjust any claim involving fraud.

I.2.4 Decisions of the CO shall be final and not subject to review unless the Contractor timely commences an administrative appeal for review of the decision, by filing a complaint with the Contract Appeals Board, as authorized by D.C. Official Code § 2-360.04.

I.2.5 Pending final decision of an appeal, action, or final settlement, the Contractor shall proceed diligently with performance of the contract in accordance with the decision of the CO.

I.3 CONTRACTS THAT CROSS FISCAL YEARS

Continuation of this contract beyond the current fiscal year is contingent upon future fiscal appropriations.

I.4 CONFIDENTIALITY OF INFORMATION

The Contractor shall keep all information relating to any employee or customer of the District in absolute confidence and shall not use the information in connection with any other matters; nor shall it disclose any such information to any other person, firm or corporation, in accordance with the District and federal laws governing the confidentiality of records.

I.5 TIME

Time, if stated in a number of days, will include Saturdays, Sundays, and holidays, unless otherwise stated herein.

I.6 RIGHTS IN DATA

Delete Article 42, Rights in Data, of the Standard Contract Provisions dated July 2010 for use with District of Columbia Government Supplies and Services Contracts and substitute the following Article 42, Rights in Data) in its place:

A. Definitions

1. “Products” - A deliverable under any contract that may include commodities, services and/or technology furnished by or through Contractor, including existing and custom Products, such as, but not limited to: a) recorded information, regardless of form or the media on which it may be recorded; b) document research; c) experimental, developmental, or engineering work; d) licensed software; e) components of the hardware environment; f) printed materials (including but not limited to training manuals, system and user documentation, reports, drawings); g) third party software; h) modifications, customizations, custom programs, program listings, programming tools, data, modules, components; and i) any intellectual property embodied therein, whether in tangible or intangible form, including but not limited to utilities, interfaces, templates, subroutines, algorithms, formulas, source code, and object code.
2. “Existing Products” - Tangible Products and intangible licensed Products that exist prior to the commencement of work under the contract. Existing Products must be identified on the Product prior to commencement of work or else will be presumed to be Custom Products.
3. “Custom Products” - Products, preliminary, final or otherwise, which are created or developed by Contractor, its subcontractors, partners, employees, resellers or agents for the District under the contract.
4. “District” – The District of Columbia and its agencies.

B. Title to Project Deliverables

The Contractor acknowledges that it is commissioned by the District to perform services detailed in the contract. The District shall have ownership and rights for the duration set forth in the contract to use, copy, modify, distribute, or adapt Products as follows:

1. Existing Products: Title to all Existing Licensed Product(s), whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products, shall: (1) remain with Contractor or third party proprietary owner, who retains all rights, title and interest (including patent, trademark or copyrights). Effective upon payment, the District is granted an irrevocable, non-exclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, adapt (unless Contractor advises the District as part of Contractor’s proposal that adaptation will violate existing agreements or statutes and Contractor demonstrates such to the District’s satisfaction) and distribute Existing Product to District users up to the license capacity stated in the contract with all license rights necessary to fully effect the general business purpose(s) of the project or work plan or contract; and (2) be licensed in the name of the District. The District agrees to reproduce the copyright notice and any other legend of ownership on any copies authorized under this paragraph.
2. Custom Products: Effective upon Product creation, Contractor hereby conveys, assigns, and transfers to the District the sole and exclusive rights, title and interest in Custom Product(s),

whether preliminary, final or otherwise, including all patent, trademark and copyrights. Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Products are protected against unauthorized copying, reproduction and marketing by or through Contractor.

C. Transfers or Assignments of Existing or Custom Products by the District

The District may transfer or assign Existing or Custom Products and the licenses thereunder to another District agency. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under a project or work plan in the course of Contractor's business.

D. Subcontractor Rights

Whenever any data, including computer software, are to be obtained from a subcontractor under the contract, the Contractor shall use this clause, **Rights in Data**, in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the District's or the Contractor's rights in that subcontractor data or computer software which is required for the District.

E. Source Code Escrow

1. For all computer software furnished to the District with the rights specified in section B.2, the Contractor shall furnish to the District, a copy of the source code with such rights of the scope as specified in section B.2 of this clause. For all computer software furnished to the District with the restricted rights specified in section B.1 of this clause, the District, if the Contractor either directly or through a successor or affiliate shall cease to provide the maintenance or warranty services provided the District under the contract or any paid-up maintenance agreement, or if the Contractor should be declared insolvent by a court of competent jurisdiction, shall have the right to obtain, for its own and sole use only, a single copy of the current version of the source code supplied under the contract, and a single copy of the documentation associated therewith, upon payment to the person in control of the source code the reasonable cost of making each copy.

2. If the Contractor or Product manufacturer/developer of software furnished to the District with the rights specified in section B.1 of this clause offers the source code or source code escrow to any other commercial customers, the Contractor shall either: (1) provide the District with the source code for the Product; (2) place the source code in a third party escrow arrangement with a designated escrow agent who shall be named and identified to the District, and who shall be directed to release the deposited source code in accordance with a standard escrow arrangement acceptable to the District; or (3) will certify to the District that the Product manufacturer/developer has named the District as a named beneficiary of an established escrow arrangement with its designated escrow agent who shall be named and identified to the District, and who shall be directed to release the deposited source code in accordance with the terms of escrow.

3. The Contractor shall update the source code, as well as any corrections or enhancements to the source code, for each new release of the Product in the same manner as provided above, and certify such updating of escrow to the District in writing.

F. Indemnification and Limitation of Liability

The Contractor shall indemnify and save and hold harmless the District, its officers, agents and employees acting within the scope of their official duties against any liability, including costs and expenses, (i) for violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any data furnished under this contract, or (ii) based upon any data furnished under this contract, or based upon libelous or other unlawful matter contained in such data.

I.7 OTHER CONTRACTORS

The Contractor shall not commit or permit any act that will interfere with the performance of work by another District contractor or by any District employee.

I.8 SUBCONTRACTS

The Contractor hereunder shall not subcontract any of the Contractor's work or services to any subcontractor without the prior written consent of the CO. Any work or service so subcontracted shall be performed pursuant to a subcontract agreement, which the District will have the right to review and approve prior to its execution by the Contractor. Any such subcontract shall specify that the Contractor and the subcontractor shall be subject to every provision of this contract. Notwithstanding any such subcontract approved by the District, the Contractor shall remain liable to the District for all Contractor's work and services required hereunder.

I.9 INSURANCE

- A. **GENERAL REQUIREMENTS.** The Contractor shall procure and maintain, during the entire period of performance under this contract, the types of insurance specified below. The Contractor shall have its insurance broker or insurance company submit a Certificate of Insurance to the CO giving evidence of the required coverage prior to commencing performance under this contract. In no event shall any work be performed until the required Certificates of Insurance signed by an authorized representative of the insurer(s) have been provided to, and accepted by, the CO. All insurance shall be written with financially responsible companies authorized to do business in the District of Columbia or in the jurisdiction where the work is to be performed and have an A.M. Best Company rating of A- / VIII or higher. The Contractor shall require all of its subcontractors to carry the same insurance required herein.

All required liability policies shall include the Government of the District of Columbia as an additional insured and shall contain a waiver of subrogation.

If the Contractor and/or its subcontractors maintain broader coverage and/or higher limits than the minimums shown below, the District requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Grantee and subcontractors.

1. Commercial General Liability Insurance. The Contractor shall provide evidence satisfactory to the CO with respect to the services performed that it carries \$1,000,000 per occurrence limits; \$2,000,000 aggregate; Bodily Injury and Property

Damage including, but not limited to: premises-operations; broad form property damage; Products and Completed Operations; Personal and Advertising Injury; contractual liability and independent contractors.

2. Automobile Liability Insurance. The Contractor shall provide automobile liability insurance to cover all owned, hired or non-owned motor vehicles used in conjunction with the performance of this contract. The policy shall provide a \$1,000,000 per occurrence combined single limit for bodily injury and property damage.

3. Workers' Compensation Insurance. The Contractor shall provide Workers' Compensation insurance in accordance with the statutory mandates of the District of Columbia or the jurisdiction in which the contract is performed.

Employer's Liability Insurance. The Contractor shall provide employer's liability insurance as follows: \$500,000 per accident for injury; \$500,000 per employee for disease; and \$500,000 for policy disease limit.

4. Umbrella or Excess Liability Insurance. The Contractor shall provide umbrella or excess liability insurance as follows: \$5,000,000 per occurrence. All liability coverages must be scheduled under the umbrella policy.
5. Professional Liability Insurance (Errors & Omissions). The Contractor shall provide Professional Liability Insurance (Errors and Omissions) to cover liability resulting from any error or omission in the performance of professional services under this Contract. The policy shall provide limits of \$1,000,000 per occurrence for each wrongful act and \$2,000,000 annual aggregate.
6. Crime Insurance (3rd Party Indemnity). The Contractor shall provide a Third Party Crime policy to cover the dishonest acts of Contractor's employees which result in a loss to the District. The policy shall provide a limit of \$100,000 per occurrence.
7. Cyber Liability Insurance - The Contractor shall provide Cyber Liability Insurance, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement and shall include, but not limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

B. PRIMARY AND NONCONTRIBUTORY INSURANCE

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

1. The additional insured is a Named Insured under such other insurance; and

2. You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured. You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.
- C. DURATION. The Contractor shall maintain the required insurance until all contract work is accepted as completed by the District, except for General Liability; any required Professional Liability; any required Environmental Liability; Cyber Liability; Umbrella Liability; and any required Employment Practices Liability insurance which shall be maintained for five (5) years following the District's acceptance of the work.
- D. LIABILITY. These are the required minimum insurance requirements established by the District of Columbia. HOWEVER, THE REQUIRED MINIMUM INSURANCE REQUIREMENTS PROVIDED ABOVE WILL NOT IN ANY WAY LIMIT THE CONTRACTOR'S LIABILITY UNDER THIS CONTRACT.
- E. CONTRACTOR'S PROPERTY. Contractor and subcontractors are solely responsible for any loss or damage to their personal property, including but not limited to tools and equipment, scaffolding and temporary structures, rented machinery, or owned and leased equipment. A waiver of subrogation shall apply in favor of the District of Columbia.
- F. MEASURE OF PAYMENT. The District shall not make any separate measure or payment for the cost of insurance and bonds. The Contractor shall include all of the costs of insurance and bonds in the contract price.
- G. NOTIFICATION. The Contractor shall ensure that all policies provide that the CO shall be given thirty (30) days prior written notice in the event of coverage and / or limit changes or if the policy is canceled prior to the expiration date shown on the certificate. The Contractor shall provide the CO with ten (10) days prior written notice in the event of non-payment of premium. The Contractor will also provide the CO with an updated Certificate of Insurance should his insurance coverages renew during the contract.
- H. CERTIFICATES OF INSURANCE. The Contractor shall submit certificates of insurance giving evidence of the required coverage as specified in this section prior to commencing work. Certificates of insurance must reference the corresponding purchase order number. Evidence of insurance shall be submitted to:

The Government of the District of Columbia
ATTN: Sanaz Etminan
441 4th Street, NW, Ste. 1100S
Washington, DC 20001
202-727-3400
Sanaz.Etminan@dc.gov

- I. DISCLOSURE OF INFORMATION. The Contractor agrees that the District may disclose the name and contact information of its insurers to any third party which presents a claim against

the District for any damages or claims resulting from or arising out of work performed by the Contractor, its agents, employees, servants or subcontractors in the performance of this contract.

I.10 EQUAL EMPLOYMENT OPPORTUNITY

In accordance with the District of Columbia Administrative Issuance System, Mayor's Order 85-85 dated June 10, 1985, the forms for completion of the Equal Employment Opportunity Information Report are incorporated herein as Section J.3. An award cannot be made to any offeror who has not satisfied the equal employment requirements.

I.11 ORDER OF PRECEDENCE

The contract awarded as a result of this RFP will contain the following clause:

ORDER OF PRECEDENCE

A conflict in language shall be resolved by giving precedence to the document in the highest order of priority that contains language addressing the issue in question. The following documents are incorporated into the contract by reference and made a part of the contract in the following order of precedence:

- (1) An applicable Court Order, if any
- (2) Contract document
- (3) Standard Contract Provisions
- (4) Contract attachments other than the Standard Contract Provisions
- (5) RFP, as amended
- (6) BAFOs (in order of most recent to earliest)
- (7) Proposal

SECTION J: ATTACHMENTS

The following list of attachments is incorporated into the solicitation by reference.

Attachment Number	Document
J.1	Government of the District of Columbia Standard Contract Provisions for Use with the Supplies and Services Contracts (July 2010) available at www.ocp.dc.gov click on “Solicitation Attachments”
J.2	U.S. Department of Labor Wage Determination No. 2015-4281, Revision No. 6, dated May 08, 2017
J.3	Office of Local Business Development Equal Employment Opportunity Information Report and Mayor’s Order 85-85 available at www.ocp.dc.gov click on “Solicitation Attachments”
J.4	Department of Employment Services First Source Employment Agreement available at www.ocp.dc.gov click on “Solicitation Attachments”
J.5	Way to Work Amendment Act of 2006 - Living Wage Notice
J.6	Way to Work Amendment Act of 2006 - Living Wage Fact Sheet
J.7	Tax Certification Affidavit
J.8	Bidder/Offeror Certifications available at www.ocp.dc.gov click on “Solicitation Attachments”

SECTION K: REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS

Bidder/Offeror Certification Form (Attached) in addition available at www.ocp.dc.gov click on “Required Solicitation Documents”

SECTION L: INSTRUCTIONS, CONDITIONS AND NOTICES TO OFFERORS

L.1 CONTRACT AWARD

L.1.1 Most Advantageous to the District

The District intends to award a single contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the District, cost or price, technical and other factors, specified elsewhere in this solicitation.

L.1.2 SELECTION OF NEGOTIATION PROCESS

In accordance with 27 DCMR § 1632, after evaluation of the proposals using only the criteria stated in the RFP and in accordance with weightings provided in the RFP, the CO may elect to proceed with any method of negotiations, discussions or award of the contract without negotiations, which is set forth in subsections (a), (b), (c), or (d) of 27 DCMR § 1632.1. If the CO elects to proceed with negotiations under subsection (b) of 27 DCMR §1632.1, the CO may negotiate with the highest ranked offeror in accordance with § 1634.

L.2 PROPOSAL ORGANIZATION AND CONTENT

L.2.1 This solicitation will be conducted electronically using electronic mail. To be considered, an offeror must submit the required attachments to OAG.businessopportunities@dc.gov before the closing date and time. Paper, telephonic, telegraphic, and facsimile proposals may not be accepted.

L.2.2 All attachments shall be submitted as a .pdf file. The District will not be responsible for corruption of any file submitted. If the submitted file cannot be viewed and printed as submitted, it will not be considered.

L.2.3 The offeror shall submit two (2) attachments in its electronic submittal: (1) a technical proposal, and (2) a price proposal.

L.2.4 The offeror shall label each attachment, i.e., “Technical Proposal”, “Price Proposal.”

1) GENERAL INSTRUCTIONS

1. Proposals shall be signed by an authorized representative of the offeror. All information requested should be submitted. Failure to submit all information requested may result in the Districts requiring prompt submission of missing information and/or giving lowered evaluation scores of the proposal. Proposals which are substantially incomplete or lack key information may be rejected by the District.
2. Proposals shall be formatted using the times new roman font and print shall be no smaller than 12 point with standard 1 inch margins.
3. Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of solicitation. Emphasis should be placed on completeness and clarity of content.

4. Proposals should be prepared with a cover letter to accompany its Technical Proposal and Price Proposal. The cover letter shall at a minimum include the following:
 - a. Identify the Contact person for the offeror's proposal
 - b. Provide the Contact person's address, phone number, and e-mail address
 - c. A statement affirming the offeror's acceptance of the contract provisions as described in the solicitation.
 - d. Signature of an authorized representative of the Offeror's organization
- 2) **TECHNICAL PROPOSAL GUIDELINES:** Proposals shall clearly be labeled in the format described below:

Section I – Technical Approach (no more than 10 pages)

1. The proposal shall contain a detailed technical approach which is clear, concise, comprehensive, and explains the offeror's understanding of the requirements outlined in the scope. The approach should include a project management plan for each requirement outlined in the scope, which lays out the most critical potential issues and risks involved in the proposed litigation against distributors of prescription opioid pharmaceuticals. As part of this, the offeror in detail shall describe the technical, institutional, and legal elements necessary to achieve the successful completion of the contract. Responses should draw upon past experience, industry standards, and best practices in the project approach.
2. The proposal shall provide a detailed approach of how the offeror will evaluate and report any actual, potential or perceived conflict of interest that exists or may exist as a result of any (1) work performed or (2) conclusion reached for any former or current client which would cause the contractor to be disqualified or provide a basis to question the contractor's impartiality or objectivity throughout the lifetime of the contract.

Section II – Offeror's Team Experience (no more than 10 pages, charts not included)

1. The proposal shall contain a staffing plan detailing the resource allocation to fulfill the requirements described in the scope which identifies all key personnel, per Section L.21 of this solicitation; a draft project milestone chart reflecting the proposed teams' activities in addressing the requirements outlined in the scope and any potential, data to be collected and analyzed, phases, activities, and tasks necessary to achieve the milestones.
2. Offerors shall further provide a description of each team member's capabilities and experience in providing similar services to other organizations or government entities in the applicable solicitation labor category the offeror's team member falls under.
3. Offerors shall provide resumes, including certifications, and credentials for all team members (prime and subcontractors), which will not count against the page limit.

Section III – Offeror’s Experience and Past Performance

1. The proposal shall contain relevant case studies demonstrating the offeror’s previous experience and past performance in advising clients in connection with consumer protection litigation. As part of each case study offerors should address the extent, nature, and success of both (a) the cooperative processes, and (b) activities involving litigation.
2. The Offeror shall provide a list of three (3) previous contracts for which the Offeror provided identical or similar work within the last five (5) years. For each contract please provide the following information: Name of Company/Organization; Title of Project; Contract Number; Dollar Amount; Period of Performance, Contact Person’s Name, Title, Telephone Number and Email Address. For each project listed the Offeror shall provide detailed information that describes the projects and highlight similarities between it and the scope of this solicitation.
3. The offeror shall also provide a minimum of three (3) references, including at least one from a state or local government body that can comment on the Contractor’s ability to successfully achieve the objectives stated in the statement of work. The three projects submitted as past performance and as references may be the same and do not have to be separate and distinct.

Section V –Subcontracting Plan (if applicable)

1. A Subcontracting Plan form is available at <http://ocp.dc.gov>. Go to quick links at the bottom of the page and then click on “Required Solicitation Documents”.

3) PRICE PROPOSAL GUIDELINES

The price proposal shall be a percentage of the District of Columbia’s gross recovery from the litigation. Unless otherwise directed in writing, the price proposal shall at a minimum include:

- a) Completed/signed copy of the solicitation cover page. Amendments to the solicitation should be acknowledged in accordance with section L.13 of this solicitation.
- b) Completed Rate/Price Schedule for all years for all service areas the offeror is proposing. (Section B.3);
- c) Offeror’s are required to submit a copy of their price proposal in both PDF and MS Excel formats; and

L.2.5 Offerors are directed to the specific proposal evaluation criteria found in Section M of this solicitation, Evaluation Factors. The offeror shall respond to each factor in a way that will allow the District to evaluate the offeror’s response. The offeror shall submit information in a clear, concise, factual and logical manner providing a comprehensive description of program supplies and services and delivery thereof. The information requested for the technical proposal shall facilitate evaluation for all proposals. The technical proposal must contain sufficient detail to provide a clear and concise response fully reflecting the manner in which the offeror proposes to fully meet the requirements in Section C.

L.2.6 The District will reject any offer that fails to include a subcontracting plan that is required by law.

L.3 REQUIREMENT FOR AN ELECTRONIC COPY OF PROPOSALS TO BE MADE AVAILABLE TO THE PUBLIC

In addition to the proposal submission requirements in Section L.2 above, the offeror must submit an electronic copy of its proposal, redacted in accordance with any applicable exemptions from disclosure under D.C. Official Code § 2-534. Redacted copies of the offeror's proposal must be submitted by e-mail attachment to the contact person designated in the solicitation. D.C. Official Code § 2-536(b) requires the District to make available electronically copies of records that must be made public. The District's policy is to release documents relating to District proposals following award of the contract, subject to applicable Freedom of Information Act (FOIA) exemption under § 2-534(a)(1). Successful proposals will be published on the OCP and/or OAG websites in accordance with D.C. Official Code § 2-361.04, subject to applicable FOIA exemptions.

L.4 PROPOSAL SUBMISSION DATE AND TIME, AND LATE SUBMISSIONS, LATE MODIFICATIONS, WITHDRAWAL OR MODIFICATION OF PROPOSALS AND LATE PROPOSALS

L.4.1 Proposal Submission

L.4.1.1 Proposals must be emailed to OAG.businessopportunities@dc.gov no later than the closing date and time. late proposals, modifications to proposals, or requests for withdrawals after the exact closing date and time will not be accepted.

L.4.1.2 Paper, telephonic, telegraphic, and proposals may not be accepted or considered for award.

L.4.1.3 It is solely the offeror's sole responsibility to ensure that all attachments are included and sends the email in sufficient time to be transmitted before the closing time.

L.4.2 Withdrawal or Modification of Proposals

An offeror may modify or withdraw its proposal via email to OAG.businessopportunities@dc.gov at any time before the closing date and time for receipt of proposals.

L.4.3 Late Proposals

Late proposals or modifications to proposals after the closing date and time for receipt of proposals will not be accepted.

L.4.4 Late Modifications

A late modification of a successful proposal, which makes its terms more favorable to the District, shall be considered at any time it is received and may be accepted.

L.5 EXPLANATION TO PROSPECTIVE OFFERORS

If a prospective offeror has any questions relating to this solicitation, the prospective offeror shall submit the question electronically via email to OAG.businessopportunities@dc.gov. The prospective offeror should submit questions no later 5 days prior to the closing date and time indicated for this solicitation. The District may not consider any questions received less than 5 days before the date set for submission of proposals. The District will furnish responses via email to all prospective offeror's to which it sent the solicitation. An amendment to the solicitation will be issued if the CO decides that information is necessary in submitting offers, or if the lack of it would be prejudicial to any prospective offeror. Oral explanations or instructions given by District officials before the award of the contract will not be binding.

L.6 RESTRICTION ON DISCLOSURE AND USE OF DATA

L.6.1 Offerors who include in their proposal data that they do not want disclosed to the public or used by the District except for use in the procurement process shall mark the title page with the following legend:

"This proposal includes data that shall not be disclosed outside the District and shall not be duplicated, used or disclosed in whole or in part for any purpose except for use in the procurement process.

If, however, a contract is awarded to this offeror as a result of or in connection with the submission of this data, the District will have the right to duplicate, use, or disclose the data to the extent consistent with the District's needs in the procurement process. This restriction does not limit the District's rights to use, without restriction, information contained in this proposal if it is obtained from another source. The data subject to this restriction are contained in sheets (insert page numbers or other identification of sheets)."

L.6.2 Mark each sheet of data it wishes to restrict with the following legend:

"Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal."

L.7 PROPOSALS WITH OPTION YEARS

The offeror shall include option year prices in its price/cost proposal. An offer may be determined to be unacceptable if it fails to include pricing for the option year(s).

L.8 PROPOSAL PROTESTS

Any actual or prospective offeror or contractor who is aggrieved in connection with the solicitation or award of a contract, must file with the D.C. Contract Appeals Board (Board) a protest no later than ten (10) business days after the basis of protest is known or should have been known, whichever is earlier. A protest based on alleged improprieties in a solicitation which are apparent at the time set for receipt of initial proposals shall be filed with the Board prior to the time set for receipt of initial proposals. In procurements in which proposals are requested, alleged improprieties which do not exist in the initial solicitation, but which are subsequently incorporated into the solicitation, must be protested no later than the next closing time for receipt of proposals following the incorporation. The protest shall be filed in writing, with the Contract Appeals Board, 441 4th Street, N.W., Suite 350N, Washington, D.C. 20001. The aggrieved person shall also mail a copy of the protest to the CO for the solicitation.

L.9 UNNECESSARILY ELABORATE PROPOSALS

Unnecessarily elaborate brochures or other presentations beyond those sufficient to present a complete and effective response to this solicitation are not desired and may be construed as an indication of the offeror's lack of cost consciousness. Elaborate artwork, expensive visual and other presentation aids are neither necessary nor desired.

L.10 RETENTION OF PROPOSALS

All proposal documents will be the property of the District and retained by the District, and therefore will not be returned to the offerors.

L.11 PROPOSAL COSTS

The District is not liable for any costs incurred by the offerors in submitting proposals in response to this solicitation.

L.12 CERTIFICATES OF INSURANCE

Prior to commencing work, the Contractor shall have its insurance broker or insurance company submit certificates of insurance giving evidence of the required coverages as specified in Section I.9 to:

Sanaz Etminan
441 4th Street, NW, Ste. 1100S
Washington, DC 20001
202.727.3400
Sanaz.Etminan@dc.gov

L.13 ACKNOWLEDGMENT OF AMENDMENTS

The offeror shall acknowledge receipt of any amendment to this solicitation. The District must receive the acknowledgment by the date and time specified for receipt of proposals. An offeror's failure to acknowledge an amendment may result in rejection of its offer.

L.14 BEST AND FINAL OFFERS

If, subsequent to receiving original proposals, negotiations are conducted under 27 DCMR § 1632.1(c), all offerors within the competitive range will be so notified and will be provided an opportunity to submit written best and final offers at a designated date and time. Best and final offers will be subject to the Late Submissions, Late Modifications and Late Withdrawals of Proposals provisions of the solicitation. After evaluation of best and final offers, the CO may award the contract to the highest-ranked offeror, or negotiate with the highest ranked offeror in accordance with 27 DCMR § 1634.

L.15 LEGAL STATUS OF OFFEROR

Each proposal must provide the following information:

L.15.1 Name, address, telephone number and federal tax identification number of offeror;

L.15.2 A copy of each District of Columbia license, registration or certification that the offeror is required by law to obtain. If the offeror is a corporation or partnership and does not provide a copy of its license, registration or certification to transact business in the District of Columbia, the offer shall certify its intent to obtain the necessary license, registration or certification prior to contract award or its exemption from such requirements; and

L.15.3 If the offeror is a partnership or joint venture, the names and addresses of the general partners or individual members of the joint venture, and copies of any joint venture or teaming agreements.

L.16 FAMILIARIZATION WITH CONDITIONS

Offerors shall thoroughly familiarize themselves with the terms and conditions of this solicitation, acquainting themselves with all available information regarding difficulties which may be encountered, and the conditions under which the work is to be accomplished. Contractors will not be relieved from assuming all responsibility for properly estimating the difficulties and the cost of performing the services required herein due to their failure to investigate the conditions or to become acquainted with all information, schedules and liability concerning the services to be performed.

L.17 GENERAL STANDARDS OF RESPONSIBILITY

The prospective contractor must demonstrate to the satisfaction of the District its capability in all respects to perform fully the contract requirements; therefore, the prospective contractor must submit relevant documentation within five (5) days of the request by the District.

L.17.1 To be determined responsible, a prospective contractor must demonstrate that it:

- (a) Has adequate financial resources, or the ability to obtain such resources, required to perform the contract;
- (b) Is able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and government contract commitments;
- (c) Has a satisfactory performance record;
- (d) Has a satisfactory record of integrity and business ethics;
- (e) Has a satisfactory record of compliance with the applicable District licensing and tax laws and regulations;
- (f) Has a satisfactory record of compliance with the law, including labor and civil rights laws and rules, and the First Source Employment Agreement Act of 1984, as amended, D.C. Official Code § 2-219.01 *et seq.*;
- (g) Has, or has the ability to obtain, the necessary organization, experience, accounting, and operational control, and technical skills;
- (h) Has, or has the ability to obtain, the necessary production, construction, technical equipment, and facilities;
- (i) Has not exhibited a pattern of overcharging the District;
- (j) Does not have an outstanding debt with the District or the federal government in a delinquent status; and
- (k) Is otherwise qualified and is eligible to receive an award under applicable laws and regulations.

L.17.2 If the prospective contractor fails to supply the information requested, the CO shall make the determination of responsibility or non-responsibility based upon available information. If the

available information is insufficient to make a determination of responsibility, the CO shall determine the prospective contractor to be non-responsible.

L.18 RESERVED

L.19 RESERVED

L.20 PRE-PROPOSAL CONFERENCE

A pre-proposal conference will be held at **2:00p.m. on July 31, 2017 at 441 4th Street NW, Suite 1100S Washington, DC 20001**. Prospective offerors will be given an opportunity to ask questions regarding this solicitation at the conference. The purpose of the conference is to provide a structured and formal opportunity for the District to accept questions from offerors on the solicitation document as well as to clarify the contents of the solicitation. Attending offerors must complete the pre-proposal conference Attendance Roster at the conference so that their attendance can be properly recorded.

Impromptu questions will be permitted and spontaneous answers will be provided at the District's discretion. Verbal answers given at the pre-proposal conference are only intended for general discussion and do not represent the District's final position. All oral questions must be submitted in writing following the close of the pre-proposal conference but no later than five working days after the pre-proposal conference in order to generate an official answer. The District will furnish responses via email to all prospective offerors to which it sent the solicitation. An amendment to the solicitation will be issued if the CO decides that information is necessary in submitting proposals, or if the lack of it would be prejudicial to any prospective offeror. Oral explanations or instructions given by District officials before the award of the contract will not be binding.

L.21 KEY PERSONNEL

L.21.1 The District considers the following positions to be key personnel for this contract:

1. Senior Lawyer
2. Junior Lawyer

L.21.2 The offeror shall set forth in its proposal the names and reporting relationships of the key personnel the offeror will use to perform the work under the proposed contract. Their resumes shall be included. The hours that each will devote to the contract shall be provided in total and broken down by task.

SECTION M - EVALUATION FACTORS

M.1 EVALUATION FOR AWARD

The contract will be awarded to the responsible offeror whose offer is most advantageous to the District, based upon the evaluation criteria specified below. Thus, while the points in the evaluation criteria indicate their relative importance, the total scores will not necessarily be determinative of the award. Rather, the total scores will guide the District in making an intelligent award decision based upon the evaluation criteria.

M.1.1 The District reserves the right to request an in-person presentation from up to five (5) of the most qualified, top ranked offerors. The District also reserves the right to reassess the offeror's technical evolution as a result of the presentation.

M.2 TECHNICAL RATING

M.2.1 The Technical Rating Scale is as follows:

<u>Numeric Rating</u>	<u>Adjective</u>	<u>Description</u>
0	Unacceptable	Fails to meet minimum requirements; e.g., no demonstrated capacity, major deficiencies which are not correctable; offeror did not address the factor.
1	Poor	Marginally meets minimum requirements; major deficiencies which may be correctable.
2	Minimally Acceptable	Marginally meets minimum requirements; minor deficiencies which may be correctable.
3	Acceptable	Meets requirements; no deficiencies.
4	Good	Meets requirements and exceeds some requirements; no deficiencies.
5	Excellent	Exceeds most, if not all requirements; no deficiencies.

M.2.2 The technical rating is a weighting mechanism that will be applied to the point value for each evaluation factor to determine the offeror's score for each factor. The offeror's total technical score will be determined by adding the offeror's score in each evaluation factor. For example, if an evaluation factor has a point value range of zero (0) to forty (40) points, using the Technical Rating Scale above, if the District evaluates the offeror's response as "Good," then the score for that evaluation factor is 4/5 of 40 or 32.

If subfactors are applied, the offeror's total technical score will be determined by adding the offeror's score for each subfactor. For example, if an evaluation factor has a point value range of zero (0) to forty (40) points, with two subfactors of twenty (20) points each, using the

Technical Rating Scale above, if the District evaluates the offeror's response as "Good" for the first subfactor and "Poor" for the second subfactor, then the total score for that evaluation factor is 4/5 of 20 or 16 for the first subfactor plus 1/5 of 20 or 4 for the second subfactor, for a total of 20 for the entire factor.

M.3 EVALUATION CRITERIA

Proposals will be evaluated based on the following evaluation factors in the manner described below:

- Technical Approach - 35 points
- Offeror's Team Experience - 20 points
- Offeror's Experience and Past Performance - 35 Points

M.3.1 TECHNICAL CRITERIA (90 Points Maximum)

The District shall evaluate proposals on the basis of the factors and subfactors below, based on the extent to which the proposal contains a detailed response to each factor and subfactor that is clear, concise, comprehensive and complete.

Sections I - Technical Approach (35 points):

- 1) This evaluation factor evaluates the Offeror's proposed technical approach setting forth your process for carrying out the objectives in the scope of work successfully.
- 2) The Offeror's project management plan.

Section II – Offeror's Team Experience (20 points):

- 1) The Offeror's staffing plan and project milestone plan addressing requirements of the scope.
- 2) The Offeror's team member's expertise and previous experience providing similar services to other organizations or government entities or organizations.
- 3) Resumes

Section III - Offeror's Experience and Past Performance (35 points)

- 1) The Offeror's technical expertise and previous experience and relevance of the work performed and previous work on similar services provided by the Offeror to other entities or organizations.
- 2) The Offeror's firm references.

M.3.2 PRICE CRITERION (10 Points Maximum)

The District shall evaluate the price proposals on the basis of the following criteria. The District of Columbia will apply the contingency fee rate from the Offeror's price proposal to the District's estimated recovery; taking into account the District's view of the likely course of the litigation to the extent it is relevant to the price proposal. This evaluation will result in a projected dollar amount for the contingency fee. Proposals will be assigned points based on a rank ordering of projected dollar amounts from lowest to highest, with the lowest priced proposal receiving the highest number of points.

M.3.3 PREFERENCE POINTS AWARDED PURSUANT TO SECTION M.5.2 (12 Points Maximum)

M.3.4 TOTAL POINTS (112 Points Maximum)

Total points shall be the cumulative total of the offeror's technical criteria points, price criterion points and preference points, if any.

M.4 EVALUATION OF OPTION YEARS

The District will not evaluate offers for award purposes by evaluating the total price for all options as well as the base year. Evaluation of options shall not obligate the District to exercise them. The total District's requirements may change during the option years. Quantities to be awarded will be determined at the time each option is exercised.

M.5. PREFERENCES FOR CERTIFIED BUSINESS ENTERPRISES

Under the provisions of the "Small and Certified Business Enterprise Development and Assistance Act of 2014", D.C. Official Code § 2-218.01 *et seq.*, as amended ("Act", as used in this section), the District shall apply preferences in evaluating proposals from businesses that are certified by the Department of Small and Local Business Development (DSLBD) pursuant to Part D of the Act.

M.5.1 Application of Preferences

For evaluation purposes, the allowable preferences under the Act shall be applicable to prime contractors as follows:

- M.5.1.1** Any prime contractor that is a small business enterprise (SBE) certified by the DSLBD will receive the addition of three points on a 100-point scale added to the overall score.
- M.5.1.2** Any prime contractor that is a resident-owned business (ROB) certified by DSLBD will receive the addition of five points on a 100-point scale added to the overall score.
- M.5.1.3** Any prime contractor that is a longtime resident business (LRB) certified by DSLBD will receive the addition of five points on a 100-point scale added to the overall score.
- M.5.1.4** Any prime contractor that is a local business enterprise (LBE) certified by DSLBD will receive the addition of two points on a 100-point scale added to the overall score.
- M.5.1.5** Any prime contractor that is a local business enterprise with its principal offices located in an enterprise zone (DZE) certified by DSLBD will receive the addition of two points on a 100-point scale added to the overall score.
- M.5.1.6** Any prime contractor that is a disadvantaged business enterprise (DBE) certified by DSLBD will receive the addition of two points on a 100-point scale added to the overall score.
- M.5.1.7** Any prime contractor that is a veteran-owned business (VOB) certified by DSLBD will receive the addition of two points on a 100-point scale added to the overall score.

- M.5.1.8** Any prime contractor that is a local manufacturing business enterprise (LMBE) certified by DSLBD will receive the addition of two points on a 100-point scale added to the overall score.

M.5.2 Maximum Preference Awarded

Notwithstanding the availability of the preceding preferences, the maximum total preference to which a certified business enterprise is entitled under the Act is the equivalent of twelve (12) points on a 100-point scale for proposals submitted in response to this RFP. There will be no preference awarded for subcontracting by the prime contractor with certified business enterprises.

M.5.3 Preferences for Certified Joint Ventures

A certified joint venture will receive preferences as determined by DSLBD in accordance with D.C. Official Code § 2-218.39a (h).

M.5.4 Verification of Offeror's Certification as a Certified Business Enterprise

- M.5.4.1** Any vendor seeking to receive preferences on this solicitation must be certified at the time of submission of its proposal. The CO will verify the offeror's certification with DSLBD, and the offeror should not submit with its proposal any additional documentation regarding its certification as a certified business enterprise.

- M.5.4.2** Any vendor seeking certification in order to receive preferences under this solicitation should contact the:

Department of Small and Local Business Development
ATTN: CBE Certification Program
441 Fourth Street, NW, Suite 850N
Washington DC 20001

- M.5.4.3** All vendors are encouraged to contact DSLBD at (202) 727-3900 if additional information is required on certification procedures and requirements.

M.6 EVALUATION OF PROMPT PAYMENT DISCOUNT

- M.6.1** Prompt payment discounts shall not be considered in the evaluation of offers. However, any discount offered will form a part of the award and will be taken by the District if payment is made within the discount period specified by the offeror.

- M.6.2** In connection with any discount offered, time will be computed from the date of delivery of the supplies to carrier when delivery and acceptance are at point of origin, or from date of delivery at destination when delivery, installation and acceptance are at that, or from the date correct invoice or voucher is received in the office specified by the District, if the latter date is later than date of delivery. Payment is deemed to be made for the purpose of earning the discount on the date of mailing of the District check.